

# **EXHIBIT F**

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UTHERVERSE GAMING LLC,  
  
Plaintiff,  
  
vs.  
  
EPIC GAMES, INC.,  
  
Defendant.

VIDEO-RECORDED DEPOSITION UPON ORAL EXAMINATION OF  
BENJAMIN ELLINGER  
VOLUME 2  
\*\*CONFIDENTIAL - ATTORNEYS' EYES ONLY"

10:08 A.M.  
THURSDAY, JUNE 1, 2023  
1000 SECOND AVENUE, SUITE 3500  
SEATTLE, WASHINGTON

REPORTED BY: CARLA R. WALLAT, CRR, RPR  
WA CCR 2578, OR CSR 16-0443, CA CSR 14423  
PAGES 263 - 532

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1	A P P E A R A N C E S	1	SEATTLE, WASHINGTON; JUNE 1, 2023
2		2	10:08 A.M.
3	FOR THE PLAINTIFF:	3	--oOo--
4	COLBY B. SPRINGER	4	
5	Polsinelli	5	(Deposition Exhibit 1 was marked.) 09:38
6	Three Embarcadero Center, Suite 2400	6	THE VIDEOGRAPHER: We are going on the 10:07
7	San Francisco, California 94111	7	record at 10:08 a.m. on June 1st, 2023. Please note 10:07
8	415.248.2100	8	that microphones are sensitive and may pick up 10:07
9	cspringer@polsinelli.com	9	whispering and private conversations. Please mute your 10:07
10		10	phones at this time. Audio and video recording will 10:07
11		11	continue to take place unless all parties agree to go 10:07
12	FOR THE DEFENDANT:	12	off the record. 10:07
13	TIMOTHY CHEN	13	This is Media Unit 1 in the video-recorded 10:07
14	Morrison Foerster LLP	14	deposition of Ellinger in the matter of Uthervse 10:07
15	425 Market Street	15	Gaming versus Epic Games, Inc., filed in the 10:07
16	San Francisco, California 94105	16	United States District Court for the Western District 10:08
17	415.268.7000	17	of Washington, case number 2:1 -- excuse me, 10:08
18	tsaulsbury@mofo.com	18	2:21-cv-00799-RSM-TLF. 10:08
19		19	My name is Alan Morgan, representing Veritext, 10:08
20		20	and I'm the videographer. The court reporter is 10:08
21		21	Carla Wallat from the firm Veritext. 10:08
22		22	I'm not authorized to administer an oath. I 10:08
23	ALSO PRESENT: ALAN MORGAN, Videographer	23	am not related to any party in this action, nor am I 10:08
24		24	financially interested in the outcome. If there are 10:08
25		25	any objections to proceeding, please state them at the 10:08
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1	I N D E X	1	time of your appearance. 10:08
2		2	Counsel and all present will now state their 10:08
3	EXAMINATION BY: PAGE(S)	3	appearances and affiliations for the record, beginning 10:08
4	MR. SPRINGER 267	4	with the noticing attorney. 10:08
5		5	MR. SPRINGER: Colby Springer from 10:08
6		6	Polsinelli LLP on behalf of the plaintiff Uthervse 10:08
7		7	Gaming LLC. 10:08
8		8	MR. SAULSBURY: You have Tim Saulsbury 10:08
9		9	from the MOFO law firm on behalf of Epic Games. 10:08
10	EXHIBITS FOR IDENTIFICATION PAGE	10	THE VIDEOGRAPHER: Will the court 10:08
11	Exhibit 1 April 14, 2023 Expert Report of 266	11	reporter please swear in the witness. 10:08
12	Benjamin Ellinger	12	BENJAMIN ELLINGER,
13		13	sworn as a witness by the Certified Court Reporter,
14		14	testified as follows:
15		15	EXAMINATION
16	REPORTER'S NOTE: All quotations from exhibits are	16	BY MR. SPRINGER:
17	reflected in the manner in which they were read	17	Q. Mr. Ellinger, before the deposition began, the 10:09
18	into the record and do not necessarily indicate an	18	court reporter handed you Exhibit 1. 10:09
19	exact quote from the document.	19	Do you have Exhibit 1 in front of you? 10:09
20		20	A. I do. 10:09
21		21	Q. And do you know what Exhibit 1 is, 10:09
22		22	Mr. Ellinger? 10:09
23		23	A. I do. It appears to be the -- my -- a copy of 10:09
24		24	my expert report. 10:09
25		25	Q. Okay. And this is your expert report of 10:09
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<p>1 Q. Now, you identify, specifically in 05:02  2 paragraph 451, a series of other documents purported -- 05:02  3 purportedly related to Massive-3; is that correct? 05:02  4 A. Correct. 05:02  5 Q. This includes an article by Mr. Chris 05:02  6 Greenhalgh titled, "Applications Of Temporal Links: 05:02  7 Recording and Replaying Virtual Environments"; is that 05:02  8 correct? 05:02  9 A. Correct. 05:02  10 Q. And that bears a date of August of 2002? 05:02  11 A. Correct. 05:02  12 Q. There's also another article by Mr. Greenhalgh 05:02  13 entitled "Temporal links: Recording and Replaying 05:03  14 Virtual Environments" that's referred to as Greenhalgh 05:03  15 2; is that also correct? 05:03  16 A. Correct. 05:03  17 Q. And that bears a purported publication date of 05:03  18 October 2000; is that correct? 05:03  19 A. Correct. 05:03  20 Q. Have you ever spoken to Mr. Greenhalgh? 05:03  21 A. I have not. 05:03  22 Q. So is your understanding of Massive-3 limited 05:03  23 to your interpretation of the source code and your 05:03  24 readings of these Greenhalgh articles? 05:03  25 A. In addition to, of course, that the length of 05:03  Page 496</p>	<p>1 Q. So is it your opinion or is it your testimony 05:04  2 that one must consider the source code in the context 05:04  3 of both these Greenhalgh articles in order to evidence 05:04  4 anticipation of the asserted claims of the 05:04  5 '605 patents? 05:05  6 A. All the material source code and these 05:05  7 articles are part of the evidence that Massive-3 as a 05:05  8 system anticipates the claims. 05:05  9 Q. Now, two of those articles are separated by 05:05  10 more than two years in time. 05:05  11 Do you see that? 05:05  12 A. Yes. 05:05  13 Q. And the source code you're referring to 05:05  14 apparently was changed last in 1999. Is that also 05:05  15 correct? 05:05  16 A. I cannot swear to the exact date without 05:05  17 seeing the reference. Yes, last changed in 1999. 05:05  18 Q. Okay. Actually for accuracy, I apologize, I 05:05  19 misstated that, it says -- you indicate in the sentence 05:05  20 above that the revisions range from 1997 to 2002. Is 05:05  21 that correct? 05:05  22 A. Revisions -- indicate the dates of the 05:05  23 revisions, from '97 to 2002, the code I reviewed inside 05:05  24 this report, the particular code file was last changed 05:06  25 and continued to operate that way -- right, so -- so 05:06  Page 498</p>
<p>1 my experience as a developer and also based on the 05:03  2 screenshots, videos and data that are also listed here 05:03  3 in the documentation. 05:03  4 Q. Okay. Does the Massive-3 source code standing 05:03  5 alone anticipate any of the independent -- strike that. 05:03  6 Does the Massive-3 source code standing alone 05:03  7 anticipate the asserted claims of the '605 patent? 05:03  8 A. Again, hard to say exactly without, you know, 05:03  9 reviewing it in detail more, could very well. 05:03  10 Certainly, Massive-3, the system as a whole, including 05:03  11 art assets and other things and code does. 05:04  12 Q. Does the first Chris Greenhalgh article, 05:04  13 Greenhalgh 1, from August of 2002, in your opinion 05:04  14 anticipate each and every element -- strike that. 05:04  15 Each and every asserted claim of the '605 05:04  16 patent? 05:04  17 A. From my understanding, it is not -- it is 05:04  18 evidence that Massive-3 as a whole anticipates it. 05:04  19 Q. And is it your opinion or do you have an 05:04  20 opinion as to whether Greenhalgh 2, the second 05:04  21 Greenhalgh article published in October 2000, standing 05:04  22 alone, anticipates all of the asserted claims of the 05:04  23 '605 patent? 05:04  24 A. Again, the -- the -- it is evidence that the 05:04  25 Massive-3 system as a whole anticipates all the claims. 05:04  Page 497</p>	<p>1 good point, right. Because I just saw the last change 05:06  2 in '99. 05:06  3 Q. Yeah, I did, too. 05:06  4 A. But no. 05:06  5 Q. Sorry. 05:06  6 A. Yeah, last change in 2002, but the point being 05:06  7 that if an individual code file was last changed 05:06  8 earlier, it would still continue to operate that way 05:06  9 when Massive-3 was run in 2002. 05:06  10 Q. So what is the basis for that opinion? 05:06  11 A. When we're talking about when a code file was 05:06  12 last changed, it's still part of the Massive system, so 05:06  13 since no changes were made after that point, even when 05:06  14 you run it years after that point, it's going to do the 05:06  15 same thing for one last change because it has no -- it 05:06  16 has not changed. 05:06  17 Q. Did you compile the Massive-3 source code? 05:06  18 A. I did not. 05:06  19 Q. Did you ever run the Massive-3 source code? 05:06  20 A. I did not. 05:06  21 Q. Have you ever seen a demonstration of the 05:06  22 virtual reality environment that purports to be the 05:06  23 Massive-3 system running? 05:06  24 A. Yeah, not live. I've seen videos. 05:07  25 Q. Okay. Looking to page 215 of your report, 05:07  Page 499</p>

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<p>1 Q. What is an agent in the context of Massive-3? 05:12</p> <p>2 A. It is their term for, say, in -- in Unreal, 05:12</p> <p>3 would be called an actor. It is something that can be 05:12</p> <p>4 moved around and displayed. 05:12</p> <p>5 Q. And where did you -- where did you come from 05:12</p> <p>6 that understanding of how Massive-3 refers to an agent 05:13</p> <p>7 and what it's inclusive of? 05:13</p> <p>8 A. By reviewing the source code. 05:13</p> <p>9 Q. Okay. So is that apparent through the review 05:13</p> <p>10 of the Locale.c file that Massive-3 refers to agents as 05:13</p> <p>11 being inclusive of avatars? 05:13</p> <p>12 A. While without looking at the exact code, I 05:13</p> <p>13 could not be 100 percent sure that that specific code 05:13</p> <p>14 file shows that agents are inclusive of avatars. I 05:13</p> <p>15 think it does by my memory, but I couldn't say for sure 05:13</p> <p>16 without referring to it. If it's not that one, it's 05:13</p> <p>17 another one because they're -- that's what very much 05:13</p> <p>18 shows that agents can be player controlled. 05:13</p> <p>19 Q. Okay. 05:13</p> <p>20 A. But I do believe this one actually shows that. 05:13</p> <p>21 Q. Was there any disclosure or explanation 05:13</p> <p>22 consistent with your testimony found in either the 05:13</p> <p>23 Greenhalgh 1 or Greenhalgh 2 articles with respect to 05:13</p> <p>24 an agent being an avatar? 05:14</p> <p>25 A. Well, I would have to look through the 05:14</p> <p style="text-align: right;">Page 504</p>	<p>1 A. I'm there. 05:15</p> <p>2 Q. You're referencing Claim 2 of the '605 patent; 05:15</p> <p>3 is that correct? 05:15</p> <p>4 A. That is correct. 05:15</p> <p>5 Q. In 486, your theory of infringement -- I'm 05:15</p> <p>6 sorry.</p> <p>7 Your theory of invalidity is based on 05:15</p> <p>8 obviousness; is that correct? 05:15</p> <p>9 A. Yes. 05:15</p> <p>10 Q. And to arrive at the proposed obviousness 05:15</p> <p>11 combination that you disclose at 486, does this require 05:15</p> <p>12 a modification of the Massive-3 system? 05:16</p> <p>13 A. Yes. It would -- it would not -- you couldn't 05:16</p> <p>14 just run it as they had and -- and have that happen. 05:16</p> <p>15 Q. Do you believe the modification that you 05:16</p> <p>16 proposed with respect to Massive-3 is consistent with 05:16</p> <p>17 the overall teachings of Massive-3? 05:16</p> <p>18 A. I believe they are. 05:16</p> <p>19 Q. Why is that? 05:16</p> <p>20 A. Because the type of experience that they are 05:16</p> <p>21 attempting to create could be made more engaging, more 05:16</p> <p>22 immersive if they actually had collision with objects 05:16</p> <p>23 in the scene. Wouldn't even have to be full collision, 05:16</p> <p>24 but at least basic collision, especially with large 05:16</p> <p>25 environmental objects. 05:16</p> <p style="text-align: right;">Page 506</p>
<p>1 articles in their entirety to see whether there is some 05:14</p> <p>2 reference to that. I do not recall that they talked 05:14</p> <p>3 about their internal terminology in the code in those 05:14</p> <p>4 articles. 05:14</p> <p>5 Sometimes people use the same thing in the 05:14</p> <p>6 codes when they talk about it, sometimes they don't. 05:14</p> <p>7 And so I cannot recall for sure. They might, but I do 05:14</p> <p>8 not recall a specific place where they do. 05:14</p> <p>9 Q. Okay. You've referenced leaving an instance 05:14</p> <p>10 if enough budget is purportedly not available. 05:14</p> <p>11 Do you see that? 05:14</p> <p>12 A. Yes. 05:14</p> <p>13 Q. Does leaving an instance constitute being 05:14</p> <p>14 transported to a new instance? 05:14</p> <p>15 A. It would not have to, right? You could in 05:14</p> <p>16 certain situations be returning to a common environment 05:14</p> <p>17 that was not instanced. You could have situations 05:14</p> <p>18 where it forcibly logged you out. But, of course, it 05:15</p> <p>19 could also be that you were moved to a new instance. 05:15</p> <p>20 Q. But is being dropped from an instance, does 05:15</p> <p>21 that guarantee or does that imply that I am assigned to 05:15</p> <p>22 a new one? 05:15</p> <p>23 A. It implies but does not guarantee. 05:15</p> <p>24 Q. Okay. Turning to paragraph 486 of your 05:15</p> <p>25 report, Mr. Ellinger, on page 230. 05:15</p> <p style="text-align: right;">Page 505</p>	<p>1 Q. In rendering your opinion of obviousness with 05:17</p> <p>2 respect to Claim 2 of the '605 patent, Mr. Ellinger, 05:17</p> <p>3 did you undertake any considerations of teaching away? 05:17</p> <p>4 A. I did. 05:17</p> <p>5 Q. And what were those considerations? 05:17</p> <p>6 A. I considered whether that it would -- because 05:17</p> <p>7 of the nature of -- of the -- of Massive-3, whether 05:17</p> <p>8 it -- it would be something that they wouldn't want to 05:17</p> <p>9 do, right, because of their goals or something like 05:17</p> <p>10 that. Right, and so I considered that, but I believe 05:17</p> <p>11 they would want to do this. 05:17</p> <p>12 Q. Why do you believe that? 05:17</p> <p>13 A. Because I believe it would make the user 05:17</p> <p>14 experiences better which is a clear goal that they 05:17</p> <p>15 have. 05:17</p> <p>16 Q. And how would the proposed change that you set 05:17</p> <p>17 forth with respect to Claim 2 make the user experience 05:18</p> <p>18 better? 05:18</p> <p>19 A. By increasing immersion for the players, users 05:18</p> <p>20 of the experience, by not having the world seem so 05:18</p> <p>21 insubstantial and -- and, you know, very virtual, 05:18</p> <p>22 not -- not mirroring anything resembling their 05:18</p> <p>23 experience in the real world. 05:18</p> <p>24 Q. Did you undertake any consideration as to 05:18</p> <p>25 whether your proposed modification would make the 05:18</p> <p style="text-align: right;">Page 507</p>